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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

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11 REFUGIO CARRILLO,

12 Plaintiff,

13 v.

14 UNITED STATES DEPARTMENT OF
15 JUSTICE, et al.,

16 Defendants.

Case No. 1:20-cv-00762-AWI-SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
ACTION FOR FAILURE TO STATE A
CLAIM

(ECF Nos 4, 5.)

17 Refugio Carrillo (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, filed this civil
18 rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States magistrate
19 judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

20 On June 5, 2020, the magistrate judge filed a findings and recommendations
21 recommending that Plaintiff’s complaint be dismissed for failure to state a claim. On June 19,
22 2020, Plaintiff filed objections to the findings and recommendations.

23 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
24 *de novo* review of this case. Having carefully reviewed the entire file, the court finds the
25 findings and recommendations to be supported by the record and by proper analysis.

26 In his objections, Plaintiff argues that the United States waived immunity and he
27 exhausted his administrative remedies so the question as to whether or not he has a claim under
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1 the FCTA is not in question. Plaintiff contends that being denied the right to amend his
2 complaint violates his right under the Sixth Amendment. However, “the protections provided by
3 the Sixth Amendment are available only in ‘criminal prosecutions.’ ” United States v. Ward, 448
4 U.S. 242, 248 (1980). “[T]he Sixth Amendment does not govern civil cases.” Turner v. Rogers,
5 564 U.S. 431, 441 (2011); see also Carty v. Nelson, 426 F.3d 1064, 1073 (9th Cir.), opinion
6 amended on denial of reh’g, 431 F.3d 1185 (9th Cir. 2005) (“Sixth Amendment right to
7 confrontation does not attach in civil commitment proceedings.”); United States v. \$292,888.04
8 in U.S. Currency, 54 F.3d 564, 569 (9th Cir. 1995), as amended (May 24, 1995) (Sixth
9 Amendment right to counsel does not attach to civil forfeiture proceedings).

10 In this instance, the issue is whether a remedy for a violation of Plaintiff’s constitutional
11 rights exists under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403
12 U.S. 388 (1971), which provides a remedy for violation of civil rights by federal actors. The
13 magistrate judge properly considered the two part test articulated in Ziglar v. Abbasi, 137 S. Ct.
14 1843 (2017), and found that the special factors counsel against extending a Bivens remedy to the
15 claims raised by Plaintiff in this action. Since Bivens does not provide a remedy for the
16 constitutional violations alleged in this action, as the magistrate judge found, providing Plaintiff
17 with leave to amend would be futile.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. The findings and recommendations, filed June 5, 2020, is ADOPTED IN FULL;
20 2. Plaintiff’s complaint, filed June 2, 2020, is DISMISSED WITHOUT LEAVE TO
21 AMEND for failure to state a claim; and
22 3. The Clerk of the Court is DIRECTED to close this matter.

23 IT IS SO ORDERED.
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25 Dated: August 20, 2020


26 SENIOR DISTRICT JUDGE
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